Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

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This issue contains

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 83-1)

Bonds

Approval and discontinuance of Carrier's Bonds, Customs Form 3587

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: December 17, 1982.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
AAA Air Enterprises, Inc., a NB Corp., dba: AAA Commuter, AAA Airlines, P.O. Box 19130, Omaha, NB; air carrier; Old Republic Ins. Co.	Aug. 24, 1982	Oct. 19, 1982	Chicago, IL $25,000
American Auto Shippers, Inc., 450 Seventh Ave., NY, NY; motor carrier; Washington International Ins. Co. (PB 6/23/80) D 10/27/82 [1]	Oct. 26, 1982	Oct. 27, 1982	New York Seaport $100,000
Ray Bellew & Sons, Inc., 7810 Almeda-Genoa Rd., Houston, TX; motor carrier; Fidelity & Deposit Co.	Oct. 25, 1982	Oct. 28, 1982	Houston, TX $25,000
Blue Hen Lines, Inc., P.O. Box 280, Rt. #14, Milford, DE; motor carrier; The Ohio Casualty Ins. Co.	Apr. 30, 1982	Oct. 20, 1982	Philadelphia, PA $25,000
The Bulk Carriers Co.—See Norcros Industries Ltd.			
Chemical Express Co., 4645 N. Central Expressway, Dallas, TX; motor carrier; Reliance Ins. Co.	Feb. 27, 1980	Oct. 26, 1982	Dallas/Fort Worth, TX $100,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Churchill Truck Lines, Inc., 5330 Gulf Freeway, Houston, TX; motor carrier; Reliance Ins. Co.	Sept. 6, 1982	Nov. 1, 1982	Houston, TX $50,000
A. Cole Trucking, 81 Mission St., Montclair, NJ; motor carrier; Washington International Ins. Co.	Nov. 10, 1981	Oct. 29, 1982	Newark, NJ $50,000
Columbia Transport Corp., 8420 N.W. 30th Place, Miami, FL; motor carrier; St. Paul Fire & Marine Ins. Co.	June 14, 1982	June 14, 1982	Miami, FL $50,000
Gulf Coast Delivery, Inc., 8710 Shaw Ave., Pensacola, FL; motor carrier; U.S. Fidelity & Guaranty Co.	Sept. 22, 1982	Nov. 3, 1982	New Orleans, LA $25,000
Halberg Construction & Supply, dba: Kirscher Transport, Inc., 18 Ave. & 9 St., Virginia, MN; motor carrier; American Manufacturers Mutual Ins. Co.	Oct. 11, 1982	Nov. 9, 1982	Duluth, MN $25,000
James Hughes, Inc., 17 Battery Pl., New York, NY; water carrier; The Home Indemnity Co. D 10/27/82	Aug. 3, 1971	Aug. 18, 1971	New York Seaport $50,000
International Ex-Air Transport, Inc., 220 Guadalupe, Laredo, TX; motor carrier; Old Republic Ins. Co. (PB 7/28/82) D 10/29/82 [2]	Oct. 26, 1982	Oct. 29, 1982	Laredo, TX $25,000
International Expediting, Inc., 3400 McIntosh Rd., Fort Lauderdale, FL; motor carrier; Old Republic Ins. Co.	Oct. 15, 1982	Oct. 15, 1982	Miami, FL $25,000
Jock Trucking, Inc., 5825 Addison St., Philadelphia, PA; motor carrier; Peerless Ins. Co.	Oct. 5, 1982	Oct. 22, 1982	Philadelphia, PA $50,000
Kirscher Transport, Inc.—See Halberg Construction & Supply			
Kunkle Transfer & Storage Co., P.O. Box 3498, Phoenix, AZ; motor carrier; Aetna Casualty & Surety Co.	Aug. 29, 1982	Aug. 29, 1982	Nogales, AZ $25,000
Landmark Transport, Inc., 55 Commerce Ave., Pitman, NJ; motor carrier; Western Surety Co.	Oct. 4, 1982	Oct. 21, 1982	Philadelphia, PA $25,000
Leaseway Express—See Midwestern Distribution, Inc.			
Lumber Transport, Inc., P.O. Box 9813, Hanahan, SC; motor carrier; Ins. Co. of North America	Oct. 13, 1982	Oct. 21, 1982	Charleston, SC $25,000
Maersk Container Service Co., Inc., Berth 51, Port Newark, NJ; motor carrier; Fireman's Fund Ins. Co.	Oct. 27, 1982	Nov. 1, 1982	Newark, NJ $50,000
Midwestern Distribution, Inc., & Leaseway Express, P.O. Box 189, Fort Scott, KS; motor carrier; American Casualty Co. of Reading, PA (PB 11/24/80) D 11/1/82 [3]	Sept. 29, 1982	Nov. 1, 1982	St. Louis, MO $50,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Motorways (Ontario) Ltd., 1151 Martingrove Rd., Rexdale, Ontario, Canada; motor carrier; The Continental Ins. Co. D 11/8/82	Sept. 10, 1976	Oct. 19, 1976	Buffalo, NY $25,000
National Cartage Co., 5005 Newport Dr., Rolling Meadows, IL, motor carrier; National Surety Corp.	Oct. 20, 1982	Nov. 4, 1982	Chicago, IL $25,000
Jerry Newman & Son Ltd., R.R. #1, Cottam, Ontario, Canada; motor carrier; Old Republic Ins. Co.	Oct, 21, 1982	Oct. 21, 1982	Detroit, MI $50,000
Norcros Industries Ltd., dba: The Bulk Carriers Co., 151-City Centre Dr., Mississauga, Ontario, Canada; motor carrier; Hartford Fire Ins. Co.	Sept. 3, 1982	Oct. 25, 1982	Buffalo, NY $40,000
Plymouth Rock Transportation Corp., 1230 Massachusetts Ave., Boston, MA; motor carrier; The American Ins. Co. (PB 6/10/79) D 9/3/82 [4]	Aug. 30, 1982	Sept. 3, 1982	New York Seaport $100,000
Pyramid Van Lines, Inc., 479 S. Airport Blvd., South San Francisco, CA; motor carrier; General Ins. Co. of America D 10/26/82	Mar. 29, 1972	Apr. 10, 1972	Baltimore, MD $25,000
Querner Truck Lines, Inc., 1131-33 Austin St., San Antonio, TX; motor carrier; Western Surety Co. D 10/19/82	Apr. 19, 1978	Aug. 1, 1978	Laredo, TX $25,000
United Trans Delivery, Inc., 3800 S.W. 106th Ave., Miami, FL; motor carrier; American Motorists Ins. Co.	May 19, 1982	May 19, 1982	Miami, FL $50,000
VOT Transport Ltd., Dock Rd., Annacis Island, P.O. Box 450, New Westminster, B.C., Canada; Continental Ins. Co.	Oct. 26, 1982	Oct. 26, 1982	Seattle, WA $50,000

[1] Surety is Old Republic Ins. Co.
[2] Surety is National Surety Corp.
[3] Principal is Midwestern Distribution, Inc.; Surety is Western Surety Co.
[4] Surety is American Employers Ins. Co.

BON-3-03

GEORGE C. STEUART,
(For Marilyn G. Morrison, Director,
Carriers, Drawback and Bonds Division).

(T.D. 83-2)

Customhouse Cartman's License—Suspension

Suspension of Customhouse Cartman's License, Number JFKIA-91 issued by District (Area) Director of Customs, New York to DRD Fast Freight, Inc.

Notice is hereby given that the Commissioner of Customs on December 16, 1982, pursuant to Section 565, Tariff Act of 1930, as amended (19 U.S.C. 1565), and Part 112 of the Customs Regulations, as amended (19 C.F.R. 112), it was decided to suspend for a period of ninety days the customhouse cartman's license of DRD FAST FREIGHT, INC., Number JFKIA-91 dated May 5, 1981.

This suspension becomes effective as of January 1, 1983.

WILLIAM VON RAAB,
Commissioner of Customs.

[Published in the Federal Register, December 23, 1982 (47 FR 57388)]

(T.D. 83-3)

Customhouse Cartman's License—Revocation

Revocation of Customhouse Cartman's License Number 1816 issued by District (Area) Director of Customs, Newark to Port Terminal Refrigerated Transport, Inc.

Notice is hereby given that on December 16, 1982, pursuant to the provisions of section 565, Tariff Act of 1930, as amended, and section 112.30 of the Customs Regulations (19 C.F.R. 112.30), it was decided to revoke the Customhouse Cartman's License No. 1816 issued to Port Terminal Refrigerated Transport, Inc. of Port Newark, New Jersey. This revocation is effective as of January 6, 1982.

WILLIAM VON RAAB,
Commissioner of Customs.

[Published in the Federal Register, December 23, 1982 (47 FR 57388)]

(T.D. 83-4)

General Notice

Vessels in Foreign and Domestic Trades; Fee Schedule for Vessel Services

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The "Customs Procedural Reform and Simplification Act of 1978" repealed several statutes under which Customs charged and collected fees for specific services provided to vessels by Customs officers. That Act authorized the Secretary of the Treasury to establish a new schedule of fees to return to the Government the approximate costs of the service provided. This docu-

ment sets forth the review schedule of fees to be charged and collected for 1983 for the specified services.

EFFECTIVE DATE: January 1, 1983.

FOR FURTHER INFORMATION CONTACT: Jerry Laderberg, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5706).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Public Law 95-410, the "Customs Procedural Reform and Simplification Act of 1978," approved October 3, 1978 (the "Act"), repealed sections 2654, 4381, 4382, and 4383 of the Revised Statutes of the United States (19 U.S.C. 58; 46 U.S.C. 329, 330, and 333), the statutory authority under which Customs had been charging and collecting fees for specific services provided to vessels by Customs officers.

Because these "Navigation Fees," which are set forth in section 4.98(a), Customs Regulations (19 CFR 4.93(a)), did not cover the costs of providing the services, section 214 of the Act authorized the Secretary of the Treasury to establish a new schedule of fees to be charged and collected for furnishing these services. The fees are to be consistent with 31 U.S.C. 9701, which provides that the costs of specific services for private interests shall be reimbursed to the Government.

By Treasury Decision 80-25, published in the Federal Register on January 18, 1980 (45 FR 3570), Customs established a fee schedule to be used for 1980, and amended section 4.98(a), Customs Regulations, to provide that a revised fee schedule will be published in the Federal Register and Customs Bulletin in December of each year setting forth a revised schedule of navigation fees for the specified vessel services to be performed during the following year. The revised fee schedule is to reflect changes in the rate of compensation paid to the Customs officer performing the service. The fees are to be calculated in accordance with section 24.17(d), Customs Regulations (19 CFR 24.17(d)), and based upon the amount of time the average service requires of a Customs officer in the fifth step of GS-9.

Fee No. 6 of section 4.98(a)(1) was removed and reserved by T.D. 82-224, published in the Federal Register on November 29, 1982 (47 FR 53725).

Because of the recent Federal pay increase, it is necessary for Customs to revise the schedule of fees for 1983 to take into account this increased cost in accordance with section 4.98(a), Customs Regulations. The hourly rate utilized is $15.12, thereby reflecting the change in the rate of compensation paid to a Customs officer in the fifth step of GS-9 performing the service. The fees have been rounded off to the nearest tenth of a dollar.

ACTION

The following revised schedule of navigation fees shall be effective during 1983:

Fee No.	Description of services	Fee
1	Entry of vessel, including American, from foreign port:	
	(a) Less than 100 net tons	$7.60
	(b) 100 net tons and over	15.10
2	Clearance of vessel, including American to foreign port:	
	(a) Less than 100 net tons	7.60
	(b) 100 net tons and over	15.10
3	Issuing permit to foreign vessel to proceed from district to district, and receiving manifest	15.10
4	Receiving manifest of foreign vessel on arrival from another district, and granting a permit to unlade	15.10
5	Receiving post entry	7.60
6	Reserved:	
7	Certifying payment of tonnage tax for foreign vessel only	3.80
8	Furnishing copy of official document, including certified outward foreign manifest, and others not elsewhere enumerated	15.10

AUTHORITY

R.S. 251, as amended, 96 Stat. 1051, 92 Stat. 888 (19 U.S.C. 66, 31 U.S.C. 9701, Pub. L. 95–410).

DRAFTING INFORMATION

The principal author of this document was Charles D. Ressin, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

GEORGE C. CORCORAN, Jr.,
Acting Commissioner of Customs.

Approved: December 9, 1982.

JOHN M. WALKER, Jr.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, December 27, 1982 (47 FR 57599)]

(T.D. 83-5)

Customs Approved Public Gauger

Approval of public gauger performing gauging under standards and procedures required by Customs

Notice is hereby given pursuant to the provisions of section 151.43 of the Customs Regulations (19 CFR 151.43) that the application of Curtis & Tompkins, Ltd., 290 Division Street, San Francisco, California 94103, to gauge imported petroleum and petroleum products in the Customs Districts of Seattle, Portland, Los Angeles, San Francisco and San Diego, in accordance with the provisions of section 151.43, Subpart C, of the Customs Regulations, is approved.

Dated: December 21, 1982.

A. PIAZZA,
(For Donald W. Lewis, Director,
Entry Procedures and Penalties Division).

United States Court of International Trade

Decisions of the United States Court of International Trade

(Slip Op. 82-111)

ROQUETTE FRERES and ROQUETTE CORPORATION, PLAINTIFFS *v.* UNITED STATES, DEFENDANT, PFIZER INC., INTERVENOR

Before BOE, *Judge.*

Court No. 82-5-00636

MEMORANDUM AND ORDER

(Dated December 13, 1982)

Wald, Harkrader & Ross (Joel E. Hoffman and *Marilyn E. Kerst,* of counsel) for the plaintiffs.

J. Paul McGrath, Assistant Attorney General (*David M. Cohen,* Director Commercial Litigation Branch and *A. David Lafer*) for the defendant.

Freeman, Wasserman & Schneider (Herbert Peter Larson and *Angela P. Violin,* of counsel) for the Intervenor.

Rivkin, Sherman & Levy (Saul L. Sherman and *Lance E. Tunick*) attorneys for ICI Americas Inc., *amicus curiae.*

BOE, *Judge:* In the above-entitled action, plaintiffs, Roquette Freres and Roquette Corporation and intervenor, Pfizer Inc., foreign and domestic producers of sorbitol, respectively, move for access to all confidential documents contained in the record of the antidumping proceedings conducted by the International Trade Administration (ITA) and the International Trade Commission (ITC).[1] Defendant moves for a protective order (1) permitting release of all ITA confidential documents to plaintiff and intervenor, subject to certain terms and conditions, and (2) precluding release of ITC confidential documents or, in the alternative, permitting release of certain ITC documents and portions thereof. Plaintiffs have further moved for leave to file a confidential exhibit under seal, and ICI Americas Inc., a domestic producer of sorbitol, has filed a motion to intervene or, in the alternative, to appear *amicus curiae* for the purpose of contesting the release of any documents containing confidential business information concerning it.[2]

Section 516A(b)(2)(B) of the Tariff Act of 1930, as amended, provides:

> (B) Confidential or privileged material.—The confidential or privileged status accorded to any documents, comments, or information shall be preserved in any action under this section. Notwithstanding the preceding sentence, the court may examine, in camera, the confidential or privileged material, and may disclose such material under such terms and conditions as it may order.

This statute gives the court wide latitude in determining whether or not to release confidential documents to parties involved in an antidumping proceeding. In making its determination, the court must consider (1) the needs of the litigants for data used by the Government in order to adequately respond to the antidumping finding, (2) the need of the Government in obtaining confidential

[1] These documents consist of questionnaires submitted by sorbitol producers, internal government memoranda, ITC staff reports and various letters and exhibits collected by the ITA and ITC in investigation number 731-TA-44, which assessed duties against plaintiffs for violating U.S. antidumping laws. 47 Fed. Reg. 15391 (April 9, 1980).

[2] The respective motions, responses and repeated requests for extensions of time for further responses have been filed over a period extending from August 13, 1982 to December 3, 1982. In order to insure judicial consistency in its consideration and determinations of the foregoing, the court has awaited the presentation of arguments by all parties.

information from businesses in future proceedings, and (3) the needs of the producers of sorbitol to protect from disclosure information which, in the hands of a competitor, might injure their respective positions in the industry. This court must then balance "a party's need for the information sought against the public interest in protecting confidential business information, recognized by section 516A(b)(2)(B) and inherent in the administrative authority's ability to effectively perform its investigative duties required by the Antidumping Act." *Nakajima All Co., Ltd.* v. *United States,* 2 CIT 170, Slip Op. 81-95 (Oct. 26, 1981); *Connors Steel Co.* v. *United States,* 85 Cust. Ct. 112 (1980). Thus, where the confidential information requested was several years old and the disclosure thereof would not harm the positions of the companies submitting the information, disclosure was ordered. *Japan Exlan Co., Ltd., Mitsubishi Rayon Co., Ltd.* v. *United States, Asahi Chemical Co., Ltd.* v. *United States,* 1 CIT 286, Slip Op. 81-43 (May 12, 1981). Where, however, the relevancy of certain confidential documents (producer questionnaires) was in doubt, the court refused to disclose the documents. *Malamine Chemicals, Inc.* v. *United States,* 1 CIT 245, Slip Op. 81-32 (April 21, 1981). On the other hand, where the information contained in the specific documents requested "directly related to an assessment of whether there is material injury or a threat of material injury, and, consequently, germane to the major issues" of the case, disclosure was required. *Rhone Poulenc, Inc. and Rhone Poulenc S. A.* v. *United States,* 2 CIT 116, Slip Op. 81-87 (September 29, 1981).

Upon *in camera* inspection of the confidential documents contained in the administrative record, this court concludes that the questionnaires submitted by Pfizer Inc., Roquette Freres and Roquette Corp., and Lonza, Inc., parties to the administrative proceeding appealed from, as well as their confidential letters and exhibits and the internal memoranda of the ITC and ITA, shall be made available for inspection and copying by plaintiffs and intervenor subject to the terms and conditions enumerated, *infra.*

The questionnaires submitted by ICI Americas Inc., Merck, Inc., and Ethichem, domestic producers of sorbitol, shall be totally protected from disclosure. They contain vital statistical data concerning such matters as production capacity, customers, techniques, and the like. Much of this data was not directly relevant to the administrative determinations.

Finally, the reports prepared by the staff of the ITC and submitted to the Commission to assist its determination shall be made available to plaintiffs and intervenor, except those certain portions restating the vital data submitted by ICI Americas, Merck and Ethichem in their respective individual questionnaires will be deleted. However, the computations made by the ITC staff from the individual figures submitted by the above producers (including Pfizer and Lonza in some instances) in arriving at industry-wide totals for cer-

tain questions, such as production capacity and costs, shall be disclosed. The industry-wide aggregate data, and not the individual producer statistics, form the basis of the administrative determinations and therefore are material to plaintiffs' challenge to the finding of dumping against plaintiffs and the finding of material injury to "an industry in the United States" under 19 U.S.C. § 1673. *See* 47 Fed. Reg. 14981 (April 7, 1982).

Accordingly, upon reading and filing the respective motions of plaintiffs, Roquette Freres and Roquette Corporation, and intervenor, Pfizer Inc., for access to confidential documents contained in the administrative record, plaintiffs' motion for leave to file confidential exhibit under seal, defendant's responses and cross-motion for a protective order, and upon reading and filing all other papers and proceedings herein, it is hereby Ordered:

1. Plaintiffs' motion for leave to file confidential exhibit under seal is denied.

2. Plaintiffs' and intervenor's motions for access to certain confidential information contained in the administrative record transmitted to the court are granted to the following extent, and are denied in all other respects:

a. Within 15 days from the date of the entry of this order, the clerk of this court shall make available to plaintiffs' and intervenor's outside counsel, at the offices of the clerk, for purposes of examining and copying the confidential documents included in the record filed with this court by the United States Department of Commerce, International Trade Administration and the following confidential documents enumerated in List Number 2, "Confidential Documents Transmitted to the United States Court of International Trade," subject to the exceptions, terms and conditions specified below:

(1) Documents 1–16, 19, 21, 22–25, 27–29, 30–38, 42, 44, 48–56, 57–62 and 64–66 shall be made available in full to plaintiffs and intervenor.

(2) Documents 26, 47, 63 and 67 shall be made available. However, in the statistical tables referred to on the following pages, the names of the respective domestic producers and the data relating specifically to each shall be deleted. Only the aggregate totals and weighted averages of the domestic production of all forms of sorbitol contained in such statistical tables shall be made available:

(a) Document 26: pages A–16, table 2; A–17, table 3; A–19, table 4; A–22, table 5; A–36, table 13; A–38, table 15; A–41, table 17.

(b) Document 47: pages A–17, table 2; A–19, table 3; A–20, table 4; A–21, table 4; A–23, table 5; A–38, table 13; A–41, table 15.

(c) Document 63: pages A–18, table 2; A–20, table 3; A–22, table 4; A–29, table 8; A–32, table 9; A–34, table 10; A–41, table 13; A–44, table 15.

(d) Document 67: pages A-18, table 2; A-20, table 3; A-22, table 4; A-23, table 4; A-25, table 5; A-30, table 8; A-32, table 9; A-33, table 10; A-34, table 11; A-35, table 12; A-42, table 16; A-45, table 18.

(3) Documents numbered 17, 18, 20, 39, 40, 41, 43, 45 and 46 shall be protected from disclosure to plaintiffs and intervenor.

b. Except as otherwise provided in this order, counsel for plaintiffs and intervenor shall not disclose the confidential information to anyone other than their immediate office personnel actively assisting in this litigation.

c. Counsel for plaintiffs and intervenor and their immediate office personnel shall neither disclose nor use any of the confidential information for purposes other than this litigation or any remand or appeal of this matter.

d. If, in the opinion of plaintiffs' and/or intervenor's counsel, it becomes necessary to consult with experts in evaluating the confidential information, counsel will not contact such experts without first notifying, and conferring with, counsel for defendant regarding the suitability of such experts. If the respective parties cannot agree upon a suitable expert within ten (10) days of notification to defendant's counsel, plaintiffs' or intervenor's counsel may submit the matter to the court for resolution.

e. In no event shall disclosure of confidential information be made to in-house counsel or other representatives, agents or employees of the plaintiffs and of the intervenor, or of their constituent members.

f. Counsel for plaintiffs and intervenor shall maintain a record of any and all copies of confidential information made, the names of the persons to whom such copies were provided and the dates of their return. All such copies shall be clearly marked as containing confidential information and all persons receiving copies shall be directed to return them at the conclusion of this litigation.

g. Any documents, including briefs and memoranda, containing any of the confidential information in this order, which are filed with the court in this case or used for any other purpose, shall be conspicuously marked as follows: "'Confidential'—Subject to Protective Order. This contains material filed by (*name of party*) for the purpose of this litigation only. It is not to be opened other than by the Court, nor are the contents hereof to be displayed or revealed other than to the Court, except by Court Order or by agreement of the parties." Arrangements shall be made with the clerk of this court to retain such documents under seal, permitting access only to the court, court personnel authorized by the court to have access, and counsel for the parties. Copies of all the foregoing documents, but with the confidential information deleted, shall be filed with the court at the same time that the documents containing the confidential information are filed and shall be conspicuously marked as non-confidential copies.

h. Any briefs or memoranda containing confidential information shall be served on the other parties in a wrapper conspicuously marked on the front "Confidential—to be opened only by attorneys of parties in '*Roquette Freres and Roquette Corporation* v. *United States, and Pfizer, Inc.,*'" and shall be accompanied by a separate copy from which the confidential information has been deleted.

i. At the conclusion of this litigation and any appeal or remand of this matter, counsel for plaintiffs and intervenor shall return to the clerk of this court all copies of the confidential documents obtained under this order and the record required to be maintained under subparagraph f hereof.

j. Any reference to plaintiffs' or intervenor's counsel herein shall include counsel for any other interested party that may subsequently be granted access to such documents under protective order.

3. Defendant's cross-motion is granted except as hereinbefore modified and, accordingly, confidential documents numbered 17, 18, 20, 39, 40, 41, 43, 45 and 46 in List Number 2, "Confidential Documents Transmitted to the United States Court of International Trade," shall not be disclosed nor any part thereof made available.

(Slip Op. 82-112)

KRUPP STAHL AG, PLAINTIFF *v.* UNITED STATES, ET AL., DEFENDANTS, AND ALLEGHENY LUDLUM STEEL CORP., ET AL., DEFENDANTS-INTERVENORS

Court No. 82-12-01615

Before WATSON, *Judge.*

MEMORANDUM OPINION AND ORDER

(Decided December 13, 1982)

Coudert Brothers (*Milo G. Coerper, Mark D. Herlach* and *James R. Breckenridge* of counsel) for plaintiff Krupp Stahl AG.

J. Paul McGrath, Assistant Attorney General, *David M. Cohen,* Branch Director, Commercial Litigation Branch (*Velta A. Melbrencis,* Civil Division, Commercial Litigation Branch and *Robert Seely,* Staff Attorney, Office of General Counsel, Import Administration, U.S. Department of Commerce) for the Federal defendants.

Collier, Shannon, Rill & Scott (*David A. Hartquist, Paul C. Rosenthal* and *David L. Dick*) for defendant-intervenors Allegheny Ludlum Steel Corp.; Armco Inc.; Carpenter Technology Corp.; Colt Industries, Inc.; Crucible Materials Group; Eastern Stainless Steel Co., Guterl Special Steel Corp.; Jessop Steel Co.; Jones & Laughlin Steel Inc.; Republic Steel Corp.; Universal-Cyclops Specialty Steel Division, Cyclops Corp.; Washington Steel Corp. and the United Steelworkers of America.

WATSON, *Judge:* Plaintiff, Krupp Stahl AG (Krupp) complains that its responses to questionnaires have not been considered by the International Trade Administration of the Department of Commerce (ITA), in reaching the preliminary determination under 19 U.S.C. § 1673a(c)(2) of whether certain stainless steel products from the Federal Republic of Germany were being sold here at less than fair value.

The action falls within the residual jurisdiction of this Court under 28 U.S.C. § 1581(i) but plaintiff's Constitutional due process claim and its claim of error in the agency action have not reached the point where it is appropriate for the Court to exercise its jurisdiction over the dispute. This conclusion is reached on the basis of prevailing principles of administrative law, applied as a complement to the specific reviews done by this Court in the area of the administration of the tariff laws.

The ITA preliminary determination, a copy of which was attached to plaintiff's complaint, states in essence that Krupp's data was not furnished in sufficient time to allow analysis prior to the preliminary determination. The estimated margins of dumping which were arrived at were based on the allegations in the petition, which the ITA considered to be the best information available under section 776(b) of the Tariff Act of 1930 (19 U.S.C. § 1677e(b)). The ITA further stated that the Krupp information was being reviewed for possible use in the final determination and could substantially change the margins calculated in the preliminary determination.

On December 1, 1982 the Court issued an order temporarily restraining the publication of the preliminary determination and setting a hearing for December 9, 1982 on plaintiff's motion for a preliminary injunction. Essentially, Krupp seeks to force the ITA to consider the information before it makes a preliminary determination.

Prior to the hearing on injunctive relief, the Court received a responsive memorandum of law from the federal defendants, together with their motion to dismiss. An application for intervention as defendants was also received from a number of domestic parties together with their motion to dismiss and supporting memorandum. The Court also received a supplemental memorandum from plaintiff. The Court granted the application for intervention and oral argument was heard on all pending matters on December 9, 1982.

As a result, the Court has decided that the dispute presented by plaintiff is not ripe for adjudication within the standards of the Administrative Procedure Act 5 U.S.C. § 551 *et seq.* In the terms of 5

U.S.C. § 704, the administrative decision lacks finality, and the administrative process offers remedies which have not been exhausted. In terms of the case law, the consequences of the agency action have not been shown to create such hardships as would make the need for finality merely technical or the exhaustion of remedies futile.

The receipt and consideration of information is part of the process of arriving at a preliminary determination. In this statutory scheme, the preliminary determination that sales have been made at less than fair value is followed by further investigation leading to a final determination which is judicially reviewable under 19 U.S.C. § 1516(a)(2)(B). The principal consequences of the decision not to consider Krupp's information were the reaching of a preliminary determination that contained margins of dumping derived from the petition. When published this will create the necessity of depositing estimated dumping duties on subsequent entries of Krupp's affected products.

So far as can be seen in the present circumstances, the deposit of estimated duties will not cause a hardship of the type which justifies judicial intrusion into an ongoing administrative investigation. (*Bethlehem Steel Corp.* v. *E.P.A.*, 699 F.2d 903 (3d Cir. 1982)). The effect on plaintiff is closer to the normal consequences of involvement in these investigations. Cf. *F.T.C.* v. *Standard Oil Co. of California*, 449 U.S. 232 (1980). This does not rule out the possibility that administrative actions taken in the course of the administration of the antidumping and countervailing duty laws may cause such hardships as would justify judicial review. In that event the ripeness would be generated by the hardship and the requirements of finality and exhaustion could be elided. *Bethlehem Steel Corp.* v. *E.P.A., supra; Gulf Oil Corp.* v. *United States Department of Energy*, 663 F.2d 296 (D.C. Cir. 1981); *Phillips Petroleum Co.* v. *Federal Energy Administration*, 435 F. Supp. 1239 (D.C. Del. 1977).

In the area of antidumping and countervailing duties, as in other areas involving the administration of the tariff laws, if a proper action arises under the Administrative Procedure Act or elsewhere, it is clear that this Court has subject matter jurisdiction under 28 U.S.C. § 1581(i) and may provide full powers of relief under 28 U.S.C. § 1585. *Sacilor, Acieres et Laminours de Lorraine, et al.* v. *United States*, 3 CIT —; 542 F. Supp. 1020 (1982). The same considerations will govern violations of due process, such as are alleged here. Absent hardship, such claims must also normally await exhaustion of administrative remedies.

The federal defendants argue that injunctive relief is not available in the area of antidumping and countervailing duties other than in the specific provision for injunctive relief against the liquidation of entries during judicial review of certain final determinations. However, the Customs Courts Act of 1980 has so drastically altered and enlarged the powers of this Court that the former sig-

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nificance of a specification of the availability of injunctive relief cannot be limiting. In the present context it represents simply a particularization of relief available in one important phase of judicial review. Presently, exclusions to the Court's powers are directly and unambiguously stated in 28 U.S.C. § 2643(c)(1).

This conforms to the basic congressional intention that there be a comprehensive system of judicial review by this Court in these areas and confirms the end to the confusion that formerly existed between this Court and the District Courts, particularly in matters requiring urgent relief. H. Rep. 96–1235, 96th Cong., 2d Sess. 19, 20, 47 (1980). In its parallel position to the District Courts, the jurisdiction of this Court within its assigned area of the law, is no less comprehensive and no less imbued with the principles of administrative law. This also best conforms to the Congressional recognition that there would be civil actions relating to antidumping and countervailing duty matters which were not specified in section 516A (19 U.S.C. § 1516a).

All this leads to the conclusion that the Court is empowered to offer complete relief in all actions within its jurisdiction except where particular forms of relief are explicitly barred. In this case however, the matter has not ripened to the point where judicial review is appropriate.

Considering the pervasiveness of this Court's judicial review and the legislative intention in creating a comprehensive scheme of judicial review, it is more accurate to characterize the failure of this action as due to the exercise of the Court's discretion not to entertain actions which are not ripe. It is not due to a congenital lack of jurisdiction over these matters. See *Matthews* v. *Dray,* 426 U.S. 67 (1976). See also K. Davis, *Administrative Law Treatise* §§ 20.00–20.00–1 (Suppl. 1980).

In order not to give the mistaken impression that the Court's powers are somehow restricted or that its basic jurisdiction is enfeebled, it is best to describe those actions which fail in this manner, as deficient in terms of the characteristics required in order for disputes to be entertained by courts within their normal areas of jurisdiction.

For the reasons discussed above, this action is hereby dismissed without prejudice.

(Slip Op. 82–113)

CERAMICA REGIOMONTANA, S.A., PLAINTIFF *v.* THE UNITED STATES, MALCOLM BALDRIGE, SECRETARY OF COMMERCE, LIONEL OLMER, UNDERSECRETARY OF COMMERCE FOR INTERNATIONAL TRADE, DEPARTMENT OF COMMERCE, GARY N. HORLICK, DEPUTY ASSISTANT SECRETARY OF COMMERCE FOR IMPORT ADMINISTRATION, JUDITH H. BELLO, ASSISTANT TO THE DEPUTY ASSISTANT SECRETARY OF COMMERCE FOR IMPORT ADMINISTRATION, WILLIAM VON RAAB, COMMISSIONER OF CUSTOMS, DEFENDANTS

Court No. 82–11–01497

Before: BERNARD NEWMAN, *Judge.*

On the Application of Tile Council of America, Inc. To Intervene

[Motion granted.]

(Dated December 13, 1982)

Stein Shostak, Shostak & O'Hara (Irwin P. Altschuler and *David R. Amerine,* Esqs., of counsel), for the plaintiff.

J. Paul McGrath, Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch, and *A. David Lafer, Esq.,* for the defendants.

Howrey & Simon (Kevin P. O'Rourke, David C. Murchison and *John F. Bruce,* Esqs.), for the intervenor.

BERNARD NEWMAN, *Judge:* Tile Council of America, Inc. ("TCA") has moved to intervene pursuant to rule 24(b) of the Rules of the Court of International Trade and 28 U.S.C. § 2631(j)(i) in this action in the nature of mandamus. TCA advances compelling reasons in support of its application.

It appears that TCA was the petitioning party in the countervailing duty proceedings before the International Trade Administration ("ITA") of the United States Department of Commerce in *Ceramic Tile from Mexico,* and was a participant in those proceedings as an interested party. Further, it appears that TCA opposed the post-investigation requests of the Government of Mexico and Ceramica Regiomontana made here to the ITA, which are the subject of this action, that the countervailing duty being imposed against imports of ceramic tile from Mexico be immediately reduced; and more, that TCA has heretofore intervened and actively participated in Court No. 82–6–00857 (involving these very parties) which action concerns the final determinations entered in the *Ceramic Tile from Mexico* proceeding.

Inasmuch as TCA was a party to the ITA's investigation in *Ceramic Tile from Mexico,* TCA "may intervene as a matter of right" in accordance with 28 U.S.C. 2631(j)(i). Plaintiff's objection to the proposed intervention on the ground that TCA could not be adversely affected or aggrieved by a decision in this case which plainly would alter the effect of the Final Affirmative Determination by the ITA is completely without merit.

Under all the facts and circumstances disclosed by the papers before the Court, TCA is clearly entitled to intervene in this action.

Accordingly, TCA's motion is granted.

(Slip Op. 82-114)

ATLANTIC SUGAR, LTD., and REDPATH SUGARS, LTD., PLAINTIFFS *v.* UNITED STATES, DEFENDANT, and AMSTAR CORPORATION, PARTY-IN-INTEREST

Court No. 80-5-00754

Before WATSON, *Judge.*

MEMORANDUM AND ORDER

(Dated December 14, 1982)

Rogers & Wells (Robert V. McIntyre and *George C. Smith* on the brief) for the plaintiffs.

J. Paul McGrath, Assistant Attorney General (*David M. Cohen,* Director, Commercial Litigation Branch, *Francis J. Sailer,* Commercial Litigation Branch, on the brief) for the defendant.

Sullivan & Cromwell and *Baker & McKenzie* for the Party-in-Interest.

WATSON, *Judge:* Plaintiffs, Atlantic Sugar, Ltd. and Redpath Sugars, Ltd., challenge (under section 516A(a)(2) of the Tariff Act of 1930 (19 U.S.C. § 1516a(a)(2))) a final determination made by the International Trade Commission (ITC) in an antidumping investigation. The ITC found that the importation of refined sugar from Canada, sold at less than fair value from October 1, 1978 through March 31, 1979 was causing material injury to an industry in the United States.[1]

The parties have cross-moved for judgment on the administrative record under Rule 56.1. Due to miscalculations in the data underlying some of the ITC findings, the Court remanded the matter to the ITC for reconsideration.[2] In the resulting affirmation of its earlier determination of injury, the ITC found that, even with the corrected data, the aggregate profits for the domestic producers continued to decline.[3]

The Court then rejected the ITC's aggregation method as an inappropriate approach to finding that injury was experienced by "the producers of all, or almost all, of the production within that market," as required by section 771(4)(C) of the Tariff Act of 1930 (19 U.S.C. § 1677(4)(C)). The matter was remanded to the ITC with orders that the Commission "determine whether the Revere Sugar Corporation suffered injury within the meaning of this statute and if not, whether there is any reason to conclude that those who *were* injured are the producers of all or almost all the production in the

[1] Sugars and Sirups From Canada, Inv. No. 731-TA-3 (March, 1980).
[2] *Atlantic Sugar, Ltd., et al.* v. *United States,* 2 CIT 18, 519 F. Supp. 916 (1981).
[3] *Sugars and Sirups From Canada,* Inv. No. 731-TA-3 (October 5, 1981).

region."[4] This resulted again in a determination of injury [5] which is now before the Court for review.

In examining the ITC's most recent determination of material injury, the Court concludes that the finding of injury to Revere was not made in accordance with the law and must therefore be held unlawful under section 516A(b)(1)(B) of the Tariff Act (19 U.S.C. § 1516a(b)(1)(B)).

The ITC based its determination that Revere was injured upon an evaluation of data that was not confined to Revere's operations within the eleven state Northeast regional limitation of this investigation.[6] Specifically, the Commission found injury to Revere based on data indicating declines in: (1) production; (2) capacity utilization; (3) sales to customers in the region; (4) person hours worked; (5) worker productivity; (6) profits; as well as (7) consistent underselling by the Canadian producers.[7]

Factors one through six of the above were based on information that included Revere's Chicago plant, located outside the regional boundaries of the investigation.

The regional industry provision, and therefore an investigation of material injury to a regional industry, is limited to producers "within such market who sell all or almost all of their production of the like product in question in that market." Section 771(4)(C) of the Tariff Act of 1930 (19 U.S.C. § 1677(4)(C)).

Since it has already been determined that a regional industry in a separate and isolated market, with specified boundaries does exist,[8] the ITC may not now ignore those boundaires when evaluating evidence for the purpose of determining whether the same regional industry has been materially injured. The proscription against use of data from elsewhere is necessary to insure that the regional industry found to exist at an earlier juncture is actually the subject of the later material injury investigation.

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[4] *Atlantic Sugar, Ltd., et al.* v. *United States*, 2 CIT 295 (1981).

[5] Sugars and Sirups From Canada, Inv. No. 731-TA-3 (April 26, 1982).

[6] The region consists of the states of Connecticut, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island and Vermont.

[7] *Sugars and Sirups From Canada*, Inv. No. 731-TA-3 (April 26, 1982).

[8] *Atlantic Sugar, Ltd., et al.* v. *United States*, 2 CIT 295 (1981).

Here, the Chicago plant is one of only three plants operated by Revere.[9] Moreover, production at this plant was of sufficient quantity to potentially render inaccurate or otherwise confuse the evaluation of the effect of Canadian sugar imports upon Revere's operations in the Northeast region.

The Commission also erred in failing to take into account information in the record regarding data for Revere from the years 1976 and 1977. While analysis of injury to the other regional producers was based on their performance over the five-year period of 1975 to 1979, the ITC confined its investigation of injury to Revere to information covering only two years—1978 and 1979, with an explanation that the data in the record concerning injury to Revere was limited to this period.[10] Revere officials reported that data for operations prior to acquisition by Revere on December 14, 1977 was not available to them and probably was still being held by Revere's predecessor in interest, Ingredient Technology Corporation.

Notwithstanding these facts, information regarding Revere's sales and profits for 1976 and part of 1977 was available, and indeed was part of the record.[11] This additional information could be important to a complete and accurate analysis of the effect of Canadian imports upon Revere.

The fact that this information was not obtained directly from Revere does not lessen the Commission's statutory obligation to use the "best information available" when a party or any other person refuses or is "unable" to provide the requested data. 19 U.S.C. § 1677e(b); *Budd Co., Railway Division* v. *United States*, 1 CIT 67, 507 F. Supp. 997 (1980). Clearly, as in this case, where the information is available and has been made part of the record, the Commission must consider the information, and if it chooses to disregard the data in its evaluation, it must explain its reasons.

The Court finds no lack of substantial evidence or lack of conformity to the law in the other findings to which plaintiffs object. Plaintiffs claim that Revere's agreement with the Philippine Exchange Company, Inc. (Philex) guaranteed Revere a profit, and that

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[9] Revere's plants are located in Brooklyn, New York; Charlestown, Massachusetts, and Chicago, Illinois.
[10] Sugars and Sirups From Canada, Inv. No. 731-TA-3 (April 26, 1982), p. 3.
[11] List 2, Doc. 50 of the Administrative Record.

consequently Canadian imports could have no material effect on Revere's profitability.

The Court's view is that the Commission could reasonably find that "it is not at all clear that Revere was guaranteed a profit by the terms of the agreement," as was stated in Revere's auditor's report. Further, this Court has already noted that no single factor, including profitability, is conclusive or decisive in a material injury determination.[12]

Plaintiffs have not persuaded the Court that the failure of Revere to supply information for the period prior to its acquisition of the plants gives rise to an inference that the evidence is unfavorable to it. The "adverse inference rule" should not apply in the case of Revere, inasmuch as this rule has vitality only "when a party has relevant evidence within his control which he fails to produce." *International Union (UAW)* v. *N.L.R.B.*, 459 F. 2d 1329, 1336 (D.C. Cir. 1972). It is undisputed that Revere did not have that information.

In the case of Northern Ohio, even if an adverse inference were to result from the failure to supply some of the requested information,[13] the Court cannot conclude that the significant decrease in sales and profitability experienced by this producer constitutes insubstantial proof of material injury. Accordingly, the finding of material injury to Northern Ohio Sugar Company is affirmed.

The Commission's finding of material injury to Refined Syrups and Sugars (RS&S) is substantially supported by evidence of significant losses for three years. Plaintiffs contend that there is a striking disparity between the Commission's analysis of Revere and that of RS&S. In the case of Revere, the Commission found material injury based upon a decline in economic indicators over the period of study, even though Revere made profits during that time. When investigating RS&S, the Commission found injury due to substantial losses suffered by RS&S, even though RS&S's losses *decreased* over time and several other indicators improved. Trends in economic indicators or the simple fact of profit or loss are not, in and

[12] *Atlantic Sugar*, 2 CIT 295 (1981).

[13] Northern Ohio did not supply information on production, pricing, capacity, employment, wages, inventories, capital expenditures and research and development expenditures.

of themselves "* * * decisive guidance with respect to the determination by the Commission of material injury." 19 U.S.C. § 1677(7)(E)(ii).

Finally, the Court wishes to elaborate upon its earlier criticism of the use of aggregate data in a regional industry investigation. As was noted in the Court's previous opinion on this matter,[14] the objective of a material injury investigation with respect to a regional industry is to determine whether "the *producers* of all or almost all of the production within that market are materially injured. * * *" § 771(4)(C) of the Tariff Act of 1930 (19 U.S.C. § 1677(4)(C)). [Emphasis supplied]

The Court recognizes that while this investigative obligation should be strictly enforced in circumstances where there are a limited number of producers, the requirement of individual injury determinations may present insurmountable administrative problems where there are numerous producers. The Court therefore recognizes that in appropriate cases, the finding of injury may be based upon methods other than direct investigation of each producer.

Therefore, in a situation with a large number of regional producers, use of aggregate data is permissible if methods of analysis insure that an accurate finding is made, with protection from the possibility of distortion of the representative quality of the data. It is readily conceivable that, absent such safeguards, injury to a region could be found even though indicators for a significant number of the individual producers do not show injury, by merely combining these indicators with those from producers who do show losses. This is clearly at variance with the statutory requirement.

In light of the above, this matter is remanded to the ITC to determine whether Revere Sugar Corporation's Northeast regional operations, exclusive of the Chicago plant, suffered material injury. This determination must take into account the information on Revere's sales and profits for 1976 and 1977, unless the Commission chooses to disregard this data and gives its reasons for so doing. The ITC shall report to the Court within 120 days of the date of entry of this Order and the parties shall have 30 days thereafter to file briefs commenting on the redetermination.

(Slip Op. 82-115)

MICHELIN TIRE CORPORATION, PLAINTIFF *v.* UNITED STATES OF AMERICA, DEFENDANT

Court No. 75-9-02467

Before WATSON, *Judge.*

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[14] *Atlantic Sugar*, 2 CIT 295 (1981).

MEMORANDUM OPINION AND ORDER

(Dated December 15, 1982)

[Remanded.]

Windels, Marx, Davies & Ives (Paul Windels, Jr. and *John Y. Taggart* of counsel) for the plaintiff.

J. Paul McGrath, Assistant Attorney General, *David M. Cohen,* Director Commercial Litigation Branch (*Joseph I. Liebman,* Attorney in Charge, International Trade Field Office) for defendant.

Frederick L. Ikenson, amicus curiae.

WATSON, *Judge:* This opinion deals with the issues raised regarding determinations made by the International Trade Administration of the Department of Commerce (ITA) on remand from this Court following the Court's opinion in *Michelin Tire Corp* v. *United States,* 2 C.I.T. 143, (1981). One purpose of the remand was for the ITA to recalculate a loan interest bounty, based on the Court's finding that the interest rate paid by plaintiff was 1.56 percent (rather than 2 percent) lower than prevailing rates. The second purpose of the remand was to have the ITA determine the proper allocation of grants, in light of the Court's finding that allocation over the period of a loan was incorrect when the grants were not obligated to be used in repaying the loan. The Court directed the Secretary of Commerce to:

> consider whether any justification exists for allocating the grants to a period shorter than the useful life of the capital assets or to determine the useful life of the assets if no shorter period is justified.

The Court further directed that the Secretary should:

> determine whether or not the benefits of the grants were experienced in earlier periods to a disproportionate extent and * * * state the reasons upon which his conclusion is based.

In its redetermination,[1] the ITA concluded that the grants should be allocated over *half* the accounting useful life of the capital assets they were used to purchase, i.e., half the accounting useful life of the plant and equipment. It justified this allocation as being in conformity with "an inferred congressional directive * * * for presumptive use of periods of less than full useful life," and "the congressional intent to front load the benefit of grants which aid an enterprise in acquiring capital plant and equipment."

It then gave a number of additional underlying reasons for choosing this approach. The principal reason was that it was "the inherent nature of these grants to bestow a disproportionate benefit in the earlier years after receipt." The ITA further states:

> The most important rationale supporting front loading is that the financial assistance of capital grants, for construction of new capacity and for expansion of existing capacity, reduces

[1] Final Results of Redetermination and/or Recalculation Pursuant to Court Remand. * * * (submitted to the Court under cover of a letter dated February 23, 1982).

> the costs of investment and market development in a crucial period when start-up costs are high and production relatively low. Thus, such grants have greater economic value to the recipient during the initial stages.

The remaining reasons generally state that the new assets are more efficient, more productive, and less expensive to maintain. In addition, the ITA opined that its method reduced the possibility that a subsidy would not be fully recovered by eliminating the later phase of the useful life of the asset when the product might become obsolete.

The ITA also made alternate calculations for the Court's consideration, using a sum-of-the-years digits method.

During the pendency of this latest phase of judicial review, the Court was informed by counsel for plaintiff that the Rubber Manufacturers Association had withdrawn the petition which led to the countervailing duties at issue in this action. The Court made inquiry of the parties as to the possible effect of that withdrawal on this litigation. As a result of the responses, the Court is satisfied that the withdrawal was done for purposes related to the conclusion of an administrative review proceeding and had no bearing on the assessment of countervailing duties prior to 1980.

The Court finds that the determinations made by the ITA on remand do not satisfy the requirements of the remand and additionally, are arbitrary and not in accordance with the law. The Court expected the ITA to make a determination of fact, namely, whether plaintiff experienced the benefit of these grants to a greater extent in a period shorter than the useful life of the assets. Instead, it is offered an asserted legislative mandate sanctioning some sort of presumption to that effect and a series of theoretical rationales. The legislative mandate does not exist.

The rationales are not shown to be based on generally accepted principles of accounting for assets or of established rules or standards for analyzing the financial condition of business enterprises. If they are true, they are not shown to have been properly related to the situation of the plaintiff.

In short, the use of a period of half the accounting life of the capital assets amounts to a procrustean method, unrelated to the facts, and unsupported by law or rule. The same is true of the alternative sum-of-the-years digits method.

In its prior decision, the Court pointed to committee reports on the Trade Agreements Act of 1979 (H.R. Rep. No. 96-317, 96th Cong. 1st Sess. 74-75 (1979) and S. Rep. No. 96-249, 96th Cong., 1st Sess. 86 (1979)) only as an indication of the logic which might support a method of allocation other than by straight line over the life of the asset, i.e., the experience of benefits in a disproportionate manner. This was a far cry from discerning a legislative mandate for "front loading" or compression or distortion of the useful life of the assets and even farther from warranting an extension of that

"mandate" to the analysis of events prior to the passage of the Trade Agreements Act of 1979.

The legislators expressed only the concern that benefits might be experienced disproportionately in the early years. The determination of whether this is the case is left to the I.T.A. but expedient distortions of the useful life of assets are not sanctioned anywhere.

The Court sees only two possibilities for the lawful allocation of grants. Either the benefit they bestow is calculated according to uniform and generally accepted principles, (already established or properly established for this purpose) or the uniform principles are varied or departed from because of specific facts found to exist in a given investigation.

In other words, the determination of the benefits experienced by the recipient of a grant must flow either from the operation of established and uniform principles on the general facts found or from an independent, direct factual finding of benefit.

Here the use of half the useful life has nothing to recommend it by way of conformity to established and recognized principles. The reduction of useful life might just as easily have been fixed at ¾ or ⅓. It is not supported by substantial evidence or legally recognizable principles of accounting. Nor, as an alternative, was there a finding of facts which could serve as a basis for departure from normal principles of financial accounting.

The Court has struggled with the possibility of itself formulating an exact allocation method in the course of this judicial review. However, in the end, the Court is forced to recognize that the formulation of such a standard cannot be adequately derived from the record in this case and requires the Court to engage in analysis which, at least in the first instance, should be within the competence of the administrative agency. The record permits relative assurance only concerning what is wrong or doubtful in these proceedings.

The arbitrary compression of useful life is wrong. The reliance on full useful life in conjunction with a straight line allocation of the grant appears doubtful when the cogent analysis of *amicus* is considered. *Amicus* demonstrates an anomaly in which, when this method is utilized, the benefit of an outright grant does not exceed what should be the lesser benefit of a loan of an equal amount at a preferential rate of interest *in which the entire principal of the loan is repaid.* Also of doubtful validity is the insistence by plaintiff that the benefit must be directly determined in terms of enhanced product competitiveness. General financial benefit to the production is sufficient to support a determination of subsidy and a quantification of exact competitive benefit to the products need not enter into the allocation of the benefit. Calculations of competitive benefit in the measurement of a subsidy would be tantamount to engrafting an injury requirement on to the basic determination of the existence of a subsidy. This line of reasoning has been rejected.

ASG Industries Inc. v. *United States*, 67 CCPA 11, C.A.D. 1237, 610 F.2d 770 (1979).

In a similar doubtful status is the argument by *amicus* which focused on the capital assets which were purchased with the grants and asserted that their value each year as it appears on the corporation's balance sheets (usually acquisition cost less accumulated depreciation) represents the true continuing value of the grant. One need only ask if a single grant used to purchase capital assets is the equivalent of a series of annual grants, each one equal to the book value of the capital assets in that year. The latter appears on its face to be a more substantial and sustained benefit.

Amicus offers one alternative which holds promise to the extent that it may represent an appropriate application of recognized principles of financial analysis. It first assumes *arguendo*, the correctness of allocating the grant over a term of years, based on the life of the asset, but refines the analysis of benefit by taking into consideration the time value of the money. In this technique, in a given year the benefit consists of the portion of the grant allocated to that year plus an amount representing the interest that would not have to be paid on the portion of the grant not yet allocated. In this or in some other method which utilizes the time value of money we may have an acceptable and recognizable means of analyzing financial benefit.

The conclusion reached here is that the method of allocation used by the ITA was not based on fact and did not embody generally accepted principles or methods of financial accounting or analysis. There appear to be alternatives available which, in the interests of justice, ought to be considered on the administrative level. The case will again be remanded for reconsideration and determination of this important point.

With respect to the calculation of the loan interest bounty by applying the 1.56% interest differential to the entire $50 million loan, the Court continues to believe that this is a correct reflection of the benefit received by plaintiff. This conclusion is reached notwithstanding the fact that Commerce took a different position in *not* calculating the interest subsidy against the entire $50 million loan in its review published on October 2, 1981 (47 F.R. 4837 and entitled "Final Results of Administrative Review.") From the record in this case, the Court remains of the opinion that for the period at issue here the preferential rate was applied to the entire $50 million loan.

For the measurement of the lives of the buildings and equipment, the Court finds no error in the ITA's use of periods of forty and twenty years respectively. This is a matter in which standardized practices are in existence, such as the United States Depreciation Tax Tables, and this is a sufficient basis for the determination.

In this action, the Court maintains the categorization of training grants as capital grants. This view has not been changed by the fact that the ITA, in its later 1978 and 1979 administrative reviews of countervailing duty rates for plaintiff, chose to treat such grants as other than capital grants and allocated them entirely to the years of receipt.

For the reasons discussed above, this matter is hereby remanded to the ITA for redetermination of the method of allocation of capital grants in accordance with this opinion. It has 120 days to report its redetermination to the Court.

Decisions of the United States Court of International Trade

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *December 16, 1982.*

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the Customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to Customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P82/196	Rao, J. December 14, 1982	Kaufman and Vinson Co., Inc., a/c Ozen Sound Devices Inc.	80-11-00014	Item 737.90 17.5% (items marked "A" and "B")	Item 724.25 5% (items marked "A") Item 685.32 6.5% (items marked "B")	Agreed statement of facts	New York Phonograph records (items marked "A"); phonographs (items marked "B")
P82/197	Ford, J. December 14, 1982	Komatsu America Corp.	73-8-02355, etc.	Item 692.35 5.5% (items marked "B" and "D") Item 664.05 5% (items marked "C") Items 664.05, etc. Not stated (items marked "E")	Item 664.05 5% (items marked "B" and "D") Dutiable on basis of export value; said value is represented by c. and i. invoice unit values, plus 11% (items marked "B" and "C") Dutiable on basis of export value; said value is represented by invoice of f.o.b. unit prices plus 32% for parts exported prior to Oct. 1977, and invoice f.o.b. unit price plus 28.2% for merchandise exported from Oct. 1977-July 31, 1979 (items marked "D" and "E")	Agreed statement of facts	San Francisco Bulldozers, crawler loaders, other excavating equipment, and attachments and accessories therefor (items marked "B" and "C") Parts for bulldozers, crawler loaders, and other excavating equipment (items marked "D") Parts for bulldozers and other excavating equipment (items marked "E")

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P82/198	Ford, J. December 14, 1982	J. E. Mamiye & Sons	80–3–00530	Item 389.62 15% + 25¢ per lb.	Item 706.24 20%	J. E. Mamiye & Sons, Inc. v. U.S. (C.D. 4878, aff'd 11/19/81)	Chicago Tote bags
P82/199	Ford, J. December 14, 1982	Marsquare International, Inc.	78–6–01180, etc.	Item 386.08 25% Item 389.62 25¢ per lb. + 15%	Item 706.23 6.5% Item 706.24 20% Item 706.60 20%	J. E. Mamiye & Sons, Inc. v. U.S. (C.D. 4878, aff'd 11/19/81)	San Francisco Tote bags
P82/200	Boe, J. December 14, 1982	American Macro-Systems, Inc.	79–2–00187	Item 720.86 16.74% or 18.21%	Item 687.60 6%	U.S. v. Texas Instruments, Inc. (C.A.D. 1244)	San Francisco Integrated circuits
P82/201	Ford, J. December 15, 1982	Monoflo International, Inc.	80–10–01661	Item 680.22 11%	Item 666.00 Duty free	C. J. Tower & Sons of Buffalo, Inc. v. U.S. No. 81–26 (CCPA 3/18/82)	Buffalo Automatic livestock waterers
P82/202	Ford, J. December 15, 1982	Sanyo Electronic Inc.	81–8–01079	Items 715.49, 716.12, 720.14, 720.16, 720.18, etc.	Item 678.50 5%, 4.8%, 4.7%, or 4.5% (items marked "A") Item 684.25 4% (items marked "B") Item 685.24 10.4%, 9.9% 9.3%, or 8.8% (items marked "C") Item 685.40 5.5%, 5.3%, 5.1%, 4.9% (items marked "D")	Texas Instruments Incorporated v. U.S. Slip Op. 81–31 (CIT 4/17/81, aff'd 3/25/82	Los Angeles Solid state timing devices; entirety with article in which incorporated

P82/203	Watson, J. December 15, 1982	May Dept. Stores Int'l, Inc.	80–1–00230	Item 382.02 42.5%	Item 382.63 37.5% per lb. + 21%	Agreed statement of facts	New York Ladies shirts (style No. KM-8351)
P82/204	Newman, J. December 15, 1982	Philipp Overseas, Inc.	78–9–01623	Item 609.86 8.5%	Item 609.82 0.1¢ per lb. + 2%	Philipp Overseas, Inc. v. U.S. (C.D. 4859, aff'd C.A.D. 1263)	Baltimore Hot rolled, annealed and pickled stainless steel angles

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/649	Watson, J. December 9, 1982	Rugby International Corp	R67/2598	Export value	Appraised values less 7.5% thereof	Agreed statement of facts	Savannah Tube mats
R82/650	Watson, J. December 9, 1982	Rugby International Corp	R67/3026	Export value	Appraised values less 7.5% thereof	Agreed statement of facts	Seattle Tube mats
R82/651	Watson, J. December 9, 1982	Rugby International Corp	R67/4754	Export value	Appraised values less 7.5% thereof	Agreed statement of facts	Mobile Rugs
R82/652	Watson, J. December 9, 1982	J. T. Steel Co	R67/139	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Tacoma (Seattle) Tube mats

R82/653	Watson, J. December 9, 1982	F. B. Vandergrift & Co., Inc	R66/23577	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Philadelphia Tube mats
R82/654	Watson, J. December 10, 1982	Empire Findings Co., Inc	R61/22768, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Thermometers
R82/655	Watson, J. December 10, 1982	Provident Import Co	251080–A, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Cotton yarn rugs, etc.
R82/656	Watson, J. December 10, 1982	Providence Import Co	R61/7073	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Houston Tube mats
R82/657	Watson, J. December 10, 1982	Providence Import Co	R63/2442, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Houston Mats and oval tube rugs, etc.
R82/658	Watson, J. December 10, 1982	Providence Import Co	R64/6466, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Boston Oval tube rugs
R82/659	Watson, J. December 10, 1982	Providence Import Co	R64/8374	Export value	Appraised values less 7.5% thereof	Agreed statement of facts	Boston Oval tube rugs
R82/660	Watson, J. December 10, 1982	Providence Import Co	R66/14559	Export value	Appraised values less 7.5% thereof	Agreed statement of facts	Miami Oval tube rugs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/661	Watson, J. December 10, 1982	Providence Import Co	R66/14560	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Miami Tube rugs
R82/662	Watson, J. December 14, 1982	W. J. Byrnes & Co	R60/10038	Export value	Appraised values less 7.5% thereof	Agreed statement of facts	Los Angeles Wool hooked rugs
R82/663	Watson, J. December 14, 1982	Don Sophisticates, Inc	80-12-00138	Constructed value	$HK59.62 each, packed (style No. 1616R) $HK46.94 each, packed (style No. 1616/217D)	Agreed statement of facts	San Francisco Wearing apparel
R82/664	Watson, J. December 14, 1982	Heide & Co. Inc	R65/259	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Wilmington, N.C. Wool tube mats
R82/665	Watson, J. December 14, 1982	Providence Import Co	R60/8090	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Seattle Cotton hooked rugs
R82/666	Watson, J. December 14, 1982	Providence Import Co	R65/13497	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	San Francisco Tube mats
R82/667	Watson, J. December 14, 1982	Providence Import Co	R65/20905	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Galveston Oval tube rugs

R82/668	Watson, J. December 14, 1982	Toyo Rug Co., Ltd	R80/1052, etc.	Export value (merchandise described on schedules A and B attached to decision and judgment)	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values (schedule A merchandise) Appraised unit values less 7.5% thereof, net packed (schedule B merchandise)	Agreed statement of facts	Los Angeles Vermont oval rugs, etc. (schedule A merchandise) Wool hooked rugs, etc. (schedule B merchandise)

Appeal to U.S. Court of Appeals for the Federal Circuit

APPEAL 83-594—LEATHER'S BEST INC. *v.* UNITED STATES—LEATHER—
Appeal from Slip Op. 82-85 docketed December 7, 1982.

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY, DECEMBER 29, 1982

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

WILLIAM VON RAAB,
Commissioner of Customs.

In the Matter of CERTAIN HAND-OPERATED, GAS-OPERATED WELDING, CUTTING, AND HEATING EQUIPMENT AND COMPONENT PARTS THEREOF	Investigation No. 337-TA-132

Notice of Commission Decision Not To Review Initial Determination To Terminate Investigation With Respect to Three Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review the presiding officer's initial determination to terminate the investigation as to the following respondents: Stillman & Associates, Inc., Fischer Welding Products, and Tacoma Tool Co. Accordingly, as of December 14, 1982, the initial determination became the Commission's determination with respect to this matter.

AUTHORITY: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and in sections 210.53(c) and 210.53(h) of the Commission's Rules of Practice and Procedure (47 F.R. 25134, June 10, 1982; to be codified at 19 CFR §§ 210.53(c) and (h)).

SUPPLEMENTARY INFORMATION: On November 17, 1982, complainant Victor Equipment Co. filed a motion (Motion No. 132-5) to

dismiss Stillman & Associates, Inc., Fischer Welding Products, and Tacoma Tool Co. as party respondents because those respondents have either ceased importing or may, in fact, never have imported the articles under investigation. On November 26, 1982, the presiding officer filed an initial determination with the Commission granting the motion.

Pursuant to section 210.53(h)(2) of the Commission's rules, an initial determination of the presiding officer under section 210.53(c) becomes the determination of the Commission fifteen (15) days from the date of service, unless the Commission orders review of the initial determination.

Having examined the record in this investigation, including Motion No. 132-5 and the initial determination of the presiding officer, the Commission found no grounds for review of the initial determination. It notes that the investigation will continue with respect to the remaining two respondents.

Copies of the presiding officer's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Sheila J. Landers, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0421.

By order of the Commission.

Issued: December 14, 1982.

KENNETH R. MASON,
Secretary.

Investigation No. TA-201-48

STAINLESS STEEL AND ALLOY TOOL STEEL

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of a hearing to be held in connection with the investigation.

EFFECTIVE DATE: December 9, 1982.

SUMMARY: Following receipt of a request by the United States Trade Representative (USTR) for an investigation under section 201 of the Trade Act of 1974 of certain imported stainless steel and alloy tool steel products, the United States International Trade Commission hereby gives notice of the institution of investigation No. TA-201-48 under section 201(b)(1) of the act (19 U.S.C. § 2251) to determine whether bars; wire rods; and plates, sheets, and strips, not cut, not pressed, and not stamped to rectangular shape; all the foregoing of stainless steel or certain alloy tool steel; and

round wire of high speed tool steel, provided for in items 606.90, 606.93, 606.94, 606.95, 607.26, 607.28, 607.34, 607.43, 607.46, 607.54, 607.72, 607.76, 607.88, 607.90, 608.26, 608.29, 608.34, 608.43, 608.49, 608.57, 608.64, and 609.45 of the Tariff Schedules of the United States, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing articles like or directly competitive with the imported articles. The Commission must report its determination to the President by May 23, 1983; however, the Commission intends to expedite this investigation and transmit its report by May 6, 1983.

FOR FURTHER INFORMATION CONTACT: Daniel Leahy, Senior Investigator (202/523-1369) or James McClure, Supervisory Investigator (202/523-0439), Office of Investigations, U.S. International Trade Commission, Washington, D.C. 20436.

SUPPLEMENTARY INFORMATION:

Background.—In accordance with a determination of the President on November 17, 1982 (47 F.R. 51717), under section 301(a)(2)(A) of the Trade Act of 1974 (19 U.S.C. 2411(a)(2)(A)), the USTR, in a letter received by the Commission on November 23, 1982 (copy attached), requested that the Commission conduct an expedited investigation under section 201 of the act concerning imports of certain stainless steel and alloy tool steel products. The President's action followed the completion of investigations under section 301 of the act initiated by USTR on February 26, 1982 (47 F.R. 10107) and on August 9, 1982 (47 F.R. 36387). These investigations were instituted on the basis of petitions, filed by the Tool and Stainless Steel Industry Committee and the United Steelworkers of America, alleging that the European Community, Belgium, France, Italy, the United Kingdom, Austria, and Sweden had subsidized the production of stainless and alloy tool steel (specialty steel) in a manner inconsistent with their obligations under Articles 8 and 11 of the Agreement on the Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (Subsidies Code).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's Rules of Practice and Procedure (19 CFR § 201.11, as amended by 47 F.R. 6189, Feb. 10, 1982), not later than 21 days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who

are parties to the investigation, pursuant to section 201.11(d) of the Commission's rules (19 CFR § 201.11(d), as amended by 47 F.R. 6189, Feb. 10, 1982). Each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR § 201.16(c), amended by 47 F.R. 33682, Aug. 4, 1982).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m., on February 9, 1983, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436 (19 CFR § 201.13). Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on January 26, 1983.

Prehearing procedures.—To facilitate the hearing process, it is requested that persons wishing to appear at the hearing submit prehearing briefs enumerating and discussing the issues which they wish to raise at the hearing. An original and fourteen copies of such prehearing briefs should be submitted to the Secretary no later than the close of business on February 2, 1983 (19 CFR § 201.8). Confidential submissions should be in accordance with the requirements of section 201.6 of the Commission's rules (19 CFR § 201.6). Copies of any prehearing briefs submitted will be made available for public inspection in the Office of the Secretary. Any prepared statements submitted will be made a part of the transcript. Oral presentations at the hearing should, to the extent possible, be limited to issues raised in the prehearing briefs.

A prehearing conference will be held on Thursday, January 27, 1983, at 10:00 a.m., in Room 117 of the U.S. International Trade Commission Building.

Written submissions.—As mentioned, parties to this investigation may file prehearing briefs by the date shown above. Posthearing briefs must be submitted no later than close of business on February 18, 1983. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before February 18, 1983. A signed original and fourteen copies of each submission must be filed with the Secretary to the Commission. All written submissions, except for confidential business information, will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential

treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR § 201.6).

Remedy.—In the event that the Commission makes an affirmative injury determination in this investigation, a public hearing on the subject of remedy recommendations will be held beginning at 10:00 a.m., on April 5, 1983, at the U.S. International Trade Commission Building. A prehearing conference will be held on Friday, March 25, 1983 at 10:00 a.m., in Room 117 of the U.S. International Trade Commission Building. Prehearing briefs will be due to the Secretary no later than the close of business on March 31, 1983, and must conform with the requirements of sections 201.6 and 201.8 of the Commission's rules. Posthearing briefs will be due to the Secretary no later than the close of business on April 8, 1983.

Inspection of request for investigation.—The request for an investigation filed in this case is available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

For further information concerning the conduct of the investigation, hearing process, and rules of general application, consult the Commission's Rules of Practice and Procedure, 19 CFR § 201, as amended by 47 F.R. 6188, Feb. 10, 1982; 47 F.R. 13791, Apr. 1, 1982; and 47 F.R. 33682, Aug. 4, 1982, and part 206, subparts A and B (19 CFR § 206, subparts A and B).

By order of the Commission.

Issued: December 10, 1982.

KENNETH R. MASON,
Secretary.

THE UNITED STATES TRADE REPRESENTATIVE,
Washington

November 19, 1982.

THE HONORABLE ALFRED ECKES,
Chairman, United States International Trade Commission, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with the determination of the President under Section 301(a)(2)(A) of the Trade Act of 1974 (19 U.S.C. 2411(a)(2)(A)) of November 17, 1982 (47 FR 51717, November 17, 1982), and pursuant to my authority under Section 201(b)(1) of the Trade Act of 1974 (19 U.S.C. 2251(b)(1)), I am hereby requesting that the U.S. International Trade Commission promptly make an investigation under Section 201 to determine whether the specialty steel articles described in attachment 1 are being imported into the U.S. in such increased quantities as to be a substantial cause of serious injury, or threat thereof, to the domestic industry producing like or directly competitive articles. I further request that the Commission expedite its investigation and submit its report to the President through me as soon as possible.

Representations have been made to USTR to the effect that certain specialty steel products included in the scope of this re-

quest are not produced domestically or are produced in small quantities and that restrictive action under Section 201 with respect to these products would be inappropriate. Therefore, in conducting its examination, the Commission is further requested to examine and provide advice on the impact of exempting the products listed in Attachment 2 from any import relief measures which the Commission may recommend.

Very truly yours,

WILLIAM E. BROCK.

Attachment 1

The specialty steel products provided for in the following item numbers of the Tariff Schedules of the United States Annotated (TSUSA) constitute the subject of this request for an investigation under Section 201 of the Trade Act of 1974.

1. Stainless steel sheet and strip:

607.7610	608.2900
607.9010	608.4300
607.9020	608.5700
608.2600	

2. Stainless steel plate:

607.7605	607.9005

3. Stainless steel bar:

606.9005	606.9010

4. Stainless steel rod:

607.2600	607.4300

5. Alloy tool steel:

606.9300	607.5420
606.9400	607.7205
606.9505	607.7220
606.9510	607.8805
606.9520	607.8820
606.9525	608.3405
606.9535	608.3420
606.9540	608.4905
607.2800	608.4920
607.3405	608.6405
607.3420	608.6420
607.4600	609.4520
607.5405	609.4550

Attachment 2

Described below are the articles with respect to which USTR has requested the Commission to examine and provide advice on the impact of exemption from any recommended import relief measures.

1. Razor blade steel provided for in TSUSA item number 608.2600;

2. Chipper knife steel provided for in the following TSUSA item numbers:

606.9300	607.8805
606.9400	608.3405
607.3405	608.4905
607.5405	608.6405
607.7205	

3. Band saw steel provided for in the following TSUSA item numbers:

606.9520	607.8805
606.9525	608.3405
607.3405	608.4905
607.5405	608.6405
607.7205	

4. The following stainless steel sheet product, provided for in TSUSA item number 607.9020:

Stainless steel sheet not under 0.055 inch and not over 0.065 inch in thickness, not under 25.5 inches and not over 26.25 inches in width, which contains in addition to iron, each of the following elements by weight in the amounts specified and which is certified at the time of entry to be imported for use in the manufacture of stainless-steel-clad aluminum automotive trim:

Carbon: none, or not more than 0.12 percent;

Chromium: not less than 16 percent nor more than 18 percent;

Molybdenum: not less than 0.75 percent nor more than 1.25 percent.

Investigation No. 701-TA-182 (Final)

RAIL PASSENGER CARS AND PARTS THEREOF FROM CANADA

AGENCY: United States International Trade Commission.

ACTION: Institution of final countervailing duty investigation and scheduling of a hearing to be held in connection with the investigation.

EFFECTIVE DATE: November 29, 1982.

SUMMARY: As a result of a preliminary determination by the United States Department of Commerce that the government of Canada is providing subsidies to the manufacturers, producers, or exporters of rail passenger cars and parts thereof within the meaning of section 701 of the Tariff Act of 1930 (19 U.S.C. § 1671), the United States International Trade Commission hereby gives notice of the institution of investigation No. 701-TA-182 (Final) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of rail passenger cars, assembled or unassembled, finished or unfinished, components and parts and accessories thereof and/or to be used therewith. Unless the investigation is extended, the Department of Commerce will make its final subsidy determination in the case on or before February 4, 1983, and the Commission will make its final injury determination by March 28, 1983 (19 CFR § 207.25).

FOR FURTHER INFORMATION CONTACT: Mr. Larry Reavis, Office of Investigations, U.S. International Trade Commission, Washington, D.C. 20436; telephone 202-523-0296.

SUPPLEMENTARY INFORMATION:

Background.—On August 3, 1982, the Commission determined, on the basis of the information developed during the course of its preliminary investigation, that there was a reasonable indication that an industry in the United States was materially injured, or was threatened with material injury, by reason of imports of the abovenamed products alleged to be subsidized by the government of Canada. The preliminary investigation was instituted in response to a petition filed on June 24, 1982, by the Budd Co. of Troy, Michigan.

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section

201.11 of the Commission's Rules of Practice and Procedure (19 CFR § 201.11, as amended by 47 F.R. 6189, Feb. 10, 1982), not later than 21 days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation, pursuant to section 201.11(d) of the Commission's rules (19 CFR § 201.11(d), as amended by 47 F.R. 6189, Feb. 10, 1982). Each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR § 201.16(c), as amended by 47 F.R. 33682, Aug. 4, 1982).

Staff report.—A public version of the staff report containing preliminary findings of fact in this investigation will be placed in the public record on January 31, 1983, pursuant to section 207.21 of the Commission's rules (19 CFR § 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m., on February 15, 1983, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on February 1, 1983. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 11:00 a.m., on February 3, 1983, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is February 10, 1983.

Testimony at the public hearing is governed by section 207.23 of the Commission's rules (19 CFR § 207.23, as amended by 47 F.R. 33682, Aug. 4, 1982). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with section 207.22 (19 CFR § 207.22, as amended by 47 F.R. 33682, Aug. 4, 1982). Post hearing briefs must conform with the provisions of section 207.24 (19 CFR § 207.24, as amended by 47 F.R. 6191, Feb. 10, 1982) and must be submitted not later than the close of business on February 22, 1983.

Written submissions.—As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance

as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before February 22, 1983. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the Commission's rules (19 CFR § 201.8, as amended by 47 F.R. 6188, Feb. 10, 1982, and 47 F.R. 13791, Apr. 1, 1982). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR § 201.6).

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207, as amended by 47 F.R. 6190, Feb. 10, 1982, and 47 F.R. 33682, Aug. 4, 1982), and part 201, subparts A through E (19 CFR part 201, as amended by 47 F.R. 6188, Feb. 10, 1982; 47 F.R. 13791, Apr. 1, 1982; and 47 F.R. 33682, Aug. 4, 1982).

This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR § 207.20, as amended by 47 F.R. 6190, Feb. 10, 1982).

By order of the Commission.

Issued: December 10, 1982.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN CUBE PUZZLES } Investigation No. 337-TA-112

Notice of Termination of Four Respondents Based on Settlement Agreements

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation as to respondents Henry Wedemeyer, Inc., Chinese Arts and Crafts, Inc., Imperial Merchandise, Co., Inc., and Mark Metzner, Inc., based on settlement agreements.

SUMMARY: On August 18, 1982, complainant Ideal Toy Corporation (Ideal) and respondent Henry Wedemeyer, Inc. (Wedemeyer), and Chinese Arts and Crafts, Inc. (Chinese Arts and Crafts), moved in separate joint motions (Motions Nos. 112-28 and 112-29) to terminate the above-named firms as party respondents in the investigation on the basis of settlement agreements. On September 22,

1982, the presiding officer recommended that Motions Nos. 112-28 and 112-29 be granted. A Federal Register notice soliciting comments on the proposed termination of Wedemeyer and Chinese Arts and Crafts was published (47 F.R. 47704, Oct. 27, 1982), and letters soliciting comments were sent to the Department of Justice, the Department of Health and Human Services, the Federal Trade Commission, and the U.S. Customs Service. No comments were received.

On September 28, 1982, complainant Ideal and respondent Imperial Merchandise Co., Inc. (Imperial), jointly moved (Motion No. 112-30) to terminate the investigation as to Imperial on the basis of a settlement agreement. On October 1, 1982, complainant Ideal and respondent Mark Metzner, Inc. (Metzner), jointly moved (Motion No. 112-31) to terminate the investigation as to Metzner on the basis of a settlement agreement. The Commission published a Federal Register notice on November 10, 1982, seeking comments from interested members of the public and other Government agencies on the proposed terminations of Imperial and Metzner based on settlement agreements (47 F.R. 51021). No comments were received.

On December 7, 1982, the Commission granted the joint motions to terminate the investigation as to respondents Wedemeyer, Chinese Arts and Crafts, Imperial, and Metzner on the basis of settlement agreements.

SUPPLEMENTARY INFORMATION: This investigation is being conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and concerns alleged unfair trade practices in the importation into and sale in the United States of certain cube puzzles. Notice of the institution of the investigation was published in the Federal Register of December 29, 1981 (46 F.R. 62964).

Copies of the Commission's action and order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202-523-0499.

By order of the Commission.

Issued: December 10, 1982.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN DRILL POINT SCREWS FOR DRYWALL CONSTRUCTION	Investigation No. 337-TA-116

Commission Hearing on the Presiding Officer's Recommendation and on Relief, Bonding, and the Public Interest, and the Schedule for Filing Written Submissions

AGENCY: U.S. International Trade Commission.

ACTION: The scheduling of a public hearing and written submissions in investigation No. 337-TA-116, Certain Drill Point Screws for Drywall Construction.

Notice is hereby given that the presiding officer in this investigation has issued a recommended determination that there is no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the unauthorized importation into the United States and in the sale of the drill point screws that are the subject of the investigation. Accordingly, the presiding officer's recommendation and the record have been certified to the Commission for review and a Commission determination. Interested persons may obtain copies of the nonconfidential version of the presiding officer's recommendation (as well as any other public documents on the record of the investigation) by contacting the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0176.

COMMISSION HEARING: The Commission will hold a public hearing on January 18, 1983, in the Commission's Hearing Room, 701 E Street NW., Washington, D.C. 20436, beginning at 10:00 a.m. The hearing will be divided into two parts. First, the Commission will hear oral arguments on the presiding officer's recommended determination that no violation of section 337 of the Tariff Act of 1930 exists. Second, the Commission will hear presentations concerning appropriate relief, the effect that such relief would have upon the public interest, and the proper amount of the bond during the Presidential review period in the event that the Commission determines that there is a violation of section 337 and that relief should be granted. These matters will be heard on the same day in order to facilitate the completion of this investigation within time limits established under law and to minimize the burden upon the parties.

ORAL ARGUMENTS: Parties to the investigation and interested Government agencies may present oral arguments concerning the presiding officer's recommended determination. That portion of a party's or an agency's total time allocated to oral argument may be used in any way the party or agency making argument sees fit, i.e., a portion of the time may be reserved for rebuttal or devoted to summation. The oral arguments will be held in the following order: complainant, respondents, Government agencies, and the Commis-

sion investigative attorney. Any rebuttals will be held in this order: respondents, complainant, Government agencies, and the Commission investigative attorney. Persons making oral argument are reminded that such argument must be based upon the evidentiary record certified to the Commission by the presiding officer.

ORAL PRESENTATIONS ON RELIEF, BONDING, AND THE PUBLIC INTEREST: Following the oral arguments on the presiding officer's recommendation, parties to the investigation, Government agencies, public-interest groups, and interested members of the public may make oral presentations on the issues of relief, bonding, and the public interest. This portion of the hearing is quasi-legislative in nature; presentations need not be confined to the evidentiary record certified to the Commission by the presiding officer, and may include the testimony of witnesses. Oral presentations on relief, bonding, and the public interest will be heard in this order: complainant, respondents, Government agencies, the Commission investigative attorney, public-interest groups, and interested members of the public.

If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) an order which could result in one or more respondent's being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in hearing presentations which address the form of relief, if any, which should be ordered.

If the Commission concludes that a violation of section 337 has occurred and contemplates some form of relief, it must consider the effect of that relief upon the public interest. The factors which the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers.

If the Commission finds that a violation of section 337 has occurred and orders some form of relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in hearing presentations concerning the amount of the bond, if any, which should be imposed.

TIME LIMIT FOR ORAL ARGUMENT AND ORAL PRESENTATION: Complainant, respondents (taken collectively), the Commission investigative attorney, and Government agencies will be limited to a total of 30 minutes (exclusive of time consumed by

questions from the Commission or its advisory staff) for making both oral argument on violation and oral presentations on remedy, bonding, and the public interest. Persons making only oral presentations on remedy, bonding, and the public interest will be limited to 10 minutes (exclusive of time consumed by questions from the Commission and its advisory staff). The Commission may in its discretion expand the aforementioned time limits upon receipt of a timely request to do so.

WRITTEN SUBMISSIONS: In order to give greater focus to the hearing, the parties to the investigation and interested Government agencies are encouraged to file briefs on the issues of violation (to the extent they have not already briefed that issue in their written exceptions to the presiding officer's recommended determination), remedy, bonding, and the public interest. The complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or proposed cease and desist orders for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, bonding, and the public interest. Written submissions on the question of violation must be filed not later than the close of business on December 30, 1982; written submissions on the questions of remedy, bonding, and the public interest must be filed not later than the close of business on January 6, 1983. During the course of the hearing, the parties may be asked to file posthearing briefs.

NOTICE OF APPEARANCE: Written requests to appear at the Commission hearing must be filed with the Office of the Secretary by January 12, 1983.

ADDITIONAL INFORMATION: Persons submitting briefs and/or written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to discuss confidential information or to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the presiding officer. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Secretary's Office.

Notice of this investigation was published in the Federal Register of March 3, 1982, 47 F.R. 9113.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0079.

By order of the Commission.

Issued: December 9, 1982.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN PLASTIC-CAPPED DECORATIVE EMBLEMS } Investigation No. 337-TA-121

Notice of Grant of Suspension of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Suspension of investigation.

SUMMARY: Notice is hereby given that the Commission has granted a joint motion by complainant, the Commission investigative attorney, and all respondents to suspend the above-captioned investigation.

AUTHORITY: The authority for the Commission's action is contained in section 337(b)(1) of the Tariff Act of 1930 (19 U.S.C. § 1337(b)(1)) and section 210.15 of the Commission's Rules of Practice and Procedure (19 CFR § 210.15).

SUPPLEMENTARY INFORMATION: Upon receipt of a complaint filed by D. L. Auld Company, the Commission instituted investigation No. 337-TA-121 to determine whether there is a violation of section 337 of the Tariff Act of 1930 by reason of unfair methods of competition and unfair acts in the importation and sale of certain plastic-capped decorative emblems alleged to infringe claim 1 of U.S. Letters Patent 4,100,010 (010 patent), claim 1 of U.S. Letters Patent 4,139,654, and claim 1 of U.S. Letters Patent 4,259,388. Notice of the Commission's investigation was published in the Federal Register of May 19, 1982 (47 F.R. 21639).

Complainant Auld, the Commission investigative attorney, and all respondents moved on November 22, 1982, for a suspension of the investigation pending appeal to the Court of Appeals for the Federal Circuit of a U.S. District Court ruling that the '010 patent is invalid. On November 29, 1982, the presiding officer recommended that the motion for suspension be granted.

FOR FURTHER INFORMATION CONTACT: Clarease Mitchell, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-3395.

By order of the Commission.

Issued: December 9, 1982.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN TEXTILE SPINNING FRAMES WITH AUTOMATIC DOFFERS	Investigation No. 337-TA-124

Notice of Proposed Termination of Investigation as to Two Respondents on the Basis of a Settlement Agreement and Request for Public Comments

AGENCY: U.S. International Trade Commission.

ACTION: Request for public comments on the proposed termination of two respondents in the above-captioned investigation based on a settlement agreement.

SUMMARY: Notice is hereby given that a joint motion has been filed to terminate the above-captioned investigation with respect to respondents Toyoda Automatic Loom Works, Ltd., and Toyoda Textile Machinery, Inc. ("Toyoda") on the basis of a settlement agreement executed by complainant Platt Saco Lowell Corp. (PSL) and the aforementioned respondents. Before taking final action on the motions, the Commission requests that interested members of the public submit written comments on the proposed termination of the respondents based on the settlement agreement.

DATES: In order to be considered, comments must be received within 30 days of publication of this notice in the Federal Register. Comments should conform with section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR § 201.8), and should be addressed to Kenneth R. Mason, Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

FOR FURTHER INFORMATION CONTACT: Sheila J. Landers, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0421.

SUPPLEMENTARY INFORMATION: This investigation is being conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and concerns alleged unfair trade practices in the importation into and sale in the United States of certain textile spinning frames with automatic doffers. Notice of the institution of the investigation was published in the Federal Register of August 4, 1982 (47 F.R. 33816).

On October 1, 1982, the complaintant and Toyoda filed a joint motion (Motion 124-13) to terminate the investigation with respect to Toyoda pursuant to section 210.51(c) of the Commission's Rules of Practice and Procedure on the basis of a settlement agreement.

On October 26, 1982, the presiding officer recommended that Motion 124-13 be granted.

The settlement agreement

The settlement agreement provided that Toyoda agrees not to import the allegedly infringing spinning frames during the life of

the patent in issue, except under license or if the patent is determined to be invalid or unenforceable. Toyoda agrees not to contest infringement of the patent in this investigation only, but does not admit infringement and reserves the right to contest it in any other proceeding, as well as to assert invalidity or unenforceability.

In an ancillary agreement, Toyoda agrees to pay PSL a certain sum of money for a paid-up license granted by PSL to TNS Mills, Inc., with respect to 10 allegedly infringing spinning frames already imported by Toyoda and sold to TNS Mills. PSL agrees to defend TNS Mills and Toyoda and to indemnify them for any damages and costs in any patent infringement suit instituted by a PSL licensor, or its assignees or licensees.

The complete text of the settlement agreement, except for one provision which contains confidential business information, is available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

By order of the Commission.

Issued: December 8, 1982.

KENNETH R. MASON,
Secretary.

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